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6  
Attorneys for Defendant  
7 Sears Holdings Management Corporation (erroneously sued as Sears Holding, Inc.)  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12	BIALLA & ASSOCIATES, INC.,	)	Case No. C 08-03529 MMC
13	Plaintiff,	)	<b><u>DEFENDANT SEARS HOLDINGS</u></b>
14	vs.	)	<b><u>MANAGEMENT CORPORATION'S</u></b>
15	SEARS HOLDING, INC. and DOES 1	)	<b><u>ANSWER TO PLAINTIFF'S</u></b>
16	through 10, Inclusive,	)	<b><u>COMPLAINT</u></b>
17	Defendant.	)	<b>JURY TRIAL DEMANDED</b>

18  
19 Defendant Sears Holdings Management Corporation, erroneously sued as Sears  
20 Holding, Inc. ("Defendant"), answers the Complaint of Plaintiff Bialla & Associates, Inc.  
21 ("Plaintiff") as follows:

22 **Nature of the Action**

23 1. Answering paragraph 1 of the Complaint, Defendant avers that the paragraph  
24 appears to contain mainly statements of argument and legal conclusions and not factual  
25 allegations. Defendant is not required to answer legal conclusions. To the extent the paragraph  
26 contains allegations requiring a response from Defendant, Defendant denies them on information  
27 and belief.

28 ///

**Parties**

2. Answering paragraph 2 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies them.

3. Answering paragraph 3 of the Complaint, Sears Holdings Management Corporation is the proper party but has erroneously been sued as Sears Holding, Inc. Defendant admits it is a corporation organized under the laws of Delaware and its principal place of business is in Hoffman Estates, Illinois (not Chicago). Defendant further admits it conducts business in California and Marin County.

4. Answering paragraph 4 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies them.

**Venue**

5. Answering paragraph 5 of the Complaint, Defendant avers that the matter has been properly removed to the Northern District of California, rendering moot the issue of state court venue.

**General Allegations**

6. Answering paragraph 6 of the Complaint, Defendant generally admits all of the allegations except for the allegation related to Messrs. Cross and Luse's representations to Plaintiff, which Defendant denies on information and belief.

7. Answering paragraph 7 of the Complaint, Defendant admits generally that it discussed the three positions with Plaintiff, including compensation for the positions, and Bialla's fees. Defendant denies the remaining allegations in said paragraph, and specifically denies that it agreed that computation of Plaintiff's fee would include either the LTIP or restricted stock.

8. Answering paragraph 8 of the Complaint, Defendant admits generally that the parties discussed Sears' needs, how Plaintiff's fee would be determined, and related subjects. Defendant further admits that it entered into the contracts attached as Exhibits to the Complaint.

1 Except as so admitted, Defendant denies the allegations of said paragraph, and specifically  
2 denies that it agreed that computation of Plaintiff's fee would include either the LTIP or  
3 restricted stock.

4 9. Answering paragraph 9 of the Complaint, Defendant avers that the paragraph  
5 appears to contain mainly legal conclusions and not factual allegations. Defendant is not  
6 required to answer legal conclusions. Defendant further avers that the referenced agreements are  
7 the primary evidence of their contents. Except as so averred, Defendant denies the allegations of  
8 said paragraph.

9 10. Answering paragraph 10 of the Complaint, Defendant admits that it requested  
10 Plaintiff's assistance in connection with the referenced search, and entered into the agreement  
11 attached as Exhibit B for the purpose generally described in said paragraph. Except as so  
12 admitted, Defendant denies the allegations of said paragraph.

13 11. Answering paragraph 11 of the Complaint, Defendant admits generally that the  
14 parties discussed Defendant's hiring needs and related subjects. Except as so admitted,  
15 Defendant denies the allegations of said paragraph, and specifically denies that it agreed that  
16 computation of Plaintiff's fee would include either the LTIP or restricted stock.

17 12. Answering paragraph 12 of the Complaint, Defendant admits that it hired Mr.  
18 Wical who was a candidate presented by Plaintiff. Except as so admitted, Defendant denies the  
19 allegations and specifically denies that it agreed that computation of Plaintiff's fee would include  
20 either the LTIP or restricted stock.

21 13. Answering paragraph 13 of the Complaint, Defendant avers that Plaintiff did not  
22 contract with Defendant with respect to the former employees of MediaMaster other than Mr.  
23 Day, nor did Plaintiff present to Defendant any former employees of MediaMaster other than  
24 Mr. Day, and that Plaintiff has no right to compensation based on the hiring of any such  
25 personnel. Except as so averred, Defendant denies the allegations of said paragraph.

26 14. Answering paragraph 14 of the Complaint, Defendant admits that it hired Jim  
27 Barr, Neil Day and Kelly Wical. Except as so admitted, Defendant denies the remaining  
28 allegations of said paragraph.

1           15.     Answering paragraph 15 of the Complaint, Defendant denies the allegations for  
2     lack of information or belief.

3           16.     Answering paragraph 16 of the Complaint, Defendant admits that Plaintiff sent  
4     emails on November 29 and 30, 2007 to Sears' employees that referenced the LTIP, the primary  
5     evidence of which is reflected in the documents themselves. Except as so admitted, Defendant  
6     denies the remaining allegations of said paragraph, and specifically denies that it ever approved  
7     calculation of plaintiff's fee by inclusion of either the LTIP or restricted stock.

8           17.     Answering paragraph 17 of the Complaint, Defendant admits that Messrs. Luse  
9     and Walden ended their employment with Sears. Defendant further admits that Ogun advised  
10    Plaintiff that Defendant did not agree that Plaintiff's fee could be computed based on either the  
11    LTIP or the restricted stock. Except as so admitted, Defendant denies the remaining allegations  
12    of said paragraph.

13          18.     Answering paragraph 18 of the Complaint, Defendant admits that it made a  
14    payment to Plaintiff on or about March 4, 2008 that did not include an amount attributable to the  
15    LTIP and restricted stock awards to Messrs. Barr, Day and Wical. Except as so admitted,  
16    Defendant denies the remaining allegations of said paragraph.

17          19.     Answering paragraph 19 of the Complaint, Defendant admits that Plaintiff and  
18    Defendant have discussed Plaintiff's contention that it is entitled to additional fees and that the  
19    parties reached no agreement. Except as so admitted, Defendant denies the remaining  
20    allegations of said paragraph.

21                               **First Cause of Action**

22                               **(Breach of Contract)**

23                               **(Against Sears and DOES 1 through 10)**

24          20.     Answering paragraph 20 of the Complaint, Defendant incorporates by this  
25    reference its responses to paragraphs 1 through 19.

26          21.     Answering paragraph 21 of the Complaint, Defendant avers that the paragraph  
27    contains legal conclusions not requiring a response from Defendant. To the extent the paragraph  
28    contains allegations requiring a response from Defendant, Defendant avers that the parties'

1 agreements were set forth in writing drafted by Plaintiff, that said writings comprised the entire  
2 agreements between the parties and none of the agreements were “partly oral” as now contended  
3 by Plaintiff. Except as so admitted, Defendant denies the allegations of said paragraph.

4 22. Defendant denies the allegations of paragraph 22.

5 23. Defendant denies the allegations of paragraph 23.

6 24. Defendant denies the allegations of paragraph 24, and further specifically denies  
7 that Plaintiff has been damaged in any amount, or at all, by reason of Defendant’s conduct.

8 **Second Cause of Action**

9 **(Negligent Misrepresentation)**

10 **(Against Sears and DOES 1 through 10)**

11 25. Answering paragraph 25 of the Complaint, Defendant incorporates by this  
12 reference its responses to paragraphs 1 through 24.

13 26. Defendant denies the allegations of paragraph 26

14 27. Defendant denies the allegations of paragraph 27, and specifically denies that it  
15 misrepresented its policies to Plaintiff.

16 28. Defendant avers that the parties’ agreements were set forth in writings prepared  
17 by Plaintiff and that there were no “oral agreements” that modified those writing. Except as so  
18 averred, Defendant denies the allegations of said paragraph.

19 29. Defendant denies the allegations of paragraph 29.

20 30. Defendant denies the allegations of paragraph 30.

21 **Third Cause of Action**

22 **(Against Sears and DOES 1 through 20)**

23 31. Answering paragraph 31 of the Complaint, Defendant incorporates by this  
24 reference its responses to paragraphs 1 through 30.

25 32. Answering paragraph 32 of the Complaint, Defendant denies that there is any  
26 proper legal basis for declaratory relief. To the extent Plaintiff claims rights to compensation  
27 described in said paragraph, Defendant denies that Plaintiff has any such right to payment.

28 33. Defendant denies the allegations of paragraph 33.

34. Answering paragraph 34 of the Complaint, Defendant admits that the agreements contain provisions respecting attorneys' fees, the significance of which is a matter of law for the Court. Except as so admitted, Defendant denies the remaining allegations of said paragraph.

**AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to each of the claims asserted in the Complaint, Defendant alleges:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

As a separate and additional defense, Defendant avers that the Complaint and each purported claim for relief fails to state facts sufficient to state a claim for which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

As a separate and additional defense, Defendant is informed and believes, and thereon avers that Plaintiff has unclean hands which precludes relief.

**THIRD AFFIRMATIVE DEFENSE**

**(Waiver)**

As a separate and additional defense, Defendant is informed and believes and thereon avers that Plaintiff's claims are barred by the doctrine of waiver.

**FOURTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

As a separate and additional defense, Defendant is informed and believes and thereon avers that Plaintiff's claims are barred by the doctrine of equitable estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

**(Comparative or Contributory Fault)**

As a separate and additional defense, Defendant is informed and believes and thereon avers that Plaintiff's own negligence caused or contributed to the loss alleged in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

**(Offset)**

As a separate and additional defense, Defendant avers that Plaintiff's claims are subject to an offset, more particularly described in Defendant's Counterclaim.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

As a separate and additional defense, Defendant is informed and believes and thereon avers that Plaintiff would be unjustly enriched if it received the relief prayed for in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Parol Evidence Rule)**

Plaintiff's claim that the written agreements between the parties did not set forth their complete agreement is barred by the Parol Evidence Rule.

**NINTH AFFIRMATIVE DEFENSE**

**(Reservation of All Other Affirmative Defenses)**

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses available. Defendant reserves the right to assert and rely on any additional affirmative defenses that may become available or apparent during discovery proceedings and/or trial.

WHEREFORE, Defendant prays for judgment on Plaintiff's Complaint as follows:

1. That Plaintiff be awarded nothing in this action, and its Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendant on the Complaint;

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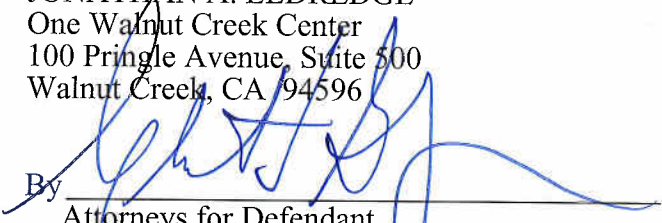
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3. That Defendant be awarded costs of suit and attorneys' fees.

4. For such other and further relief as the court may deem just and proper.

Dated: August 15, 2008

GLYNN & FINLEY, LLP  
CLEMENT L. GLYNN  
JONATHAN A. ELDREDGE  
One Walnut Creek Center  
100 Pringle Avenue, Suite 500  
Walnut Creek, CA 94596

By   
Attorneys for Defendant  
Sears Holdings Management Corporation  
(erroneously sued as Sears Holding, Inc.)

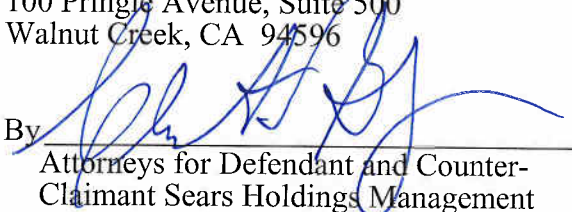


**DEMAND FOR JURY TRIAL**

Sears Holdings Management Corporation (erroneously sued as Sears Holdings, Inc.) hereby demands a jury trial on all counterclaims so triable.

Dated: August 15, 2008

GLYNN & FINLEY, LLP  
CLEMENT L. GLYNN  
JONATHAN A. ELDREDGE  
One Walnut Creek Center  
100 Pringle Avenue, Suite 500  
Walnut Creek, CA 94596

By   
Attorneys for Defendant and Counter-  
Claimant Sears Holdings Management  
Corporation (erroneously sued as Sears  
Holdings, Inc.)

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Attorneys for Defendant  
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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
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12	BIALLA & ASSOCIATES, INC.,	)	Case No. C 08-03529 MMC
13	Plaintiff,	)	<b><u>DEFENDANT SEARS HOLDINGS</u></b>
14	vs.	)	<b><u>MANAGEMENT CORPORATION'S</u></b>
15	SEARS HOLDING, INC. and DOES 1	)	<b><u>COUNTER-CLAIMS FOR:</u></b>
16	through 10, Inclusive,	)	
17	Defendant.	)	<b>(1) BREACH OF CONTRACT</b>
		)	<b>(2) UNJUST ENRICHMENT</b>
		)	<b>JURY TRIAL DEMANDED</b>

18  
19 Defendant Sears Holdings Management Corporation, erroneously sued as Sears  
20 Holdings, Inc. ("Defendant"), asserts the following counter-claims.

21 **THE PARTIES**

22 1. Sears Holdings Management Corporation ("Sears") is a Delaware corporation  
23 with its principle place of business in Hoffman Estates, Illinois.

24 2. Sears is informed and believes that Bialla & Associates, Inc. ("Bialla") is a  
25 California corporation with its principle place of business in Sausalito, California.

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27 ///

28 ///

**JURISDICTION**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as complete diversity of citizenship exists and the amount in controversy is more than \$75,000, exclusive of interest and costs.

4. This Court also has jurisdiction pursuant to 28 U.S.C. § 1367 and the doctrine of supplemental jurisdiction as Sears' counterclaims are so closely related to the claims asserted by Bialla that they form part of the same case or controversy.

5. This Court has personal jurisdiction over Bialla as it has its principal place of business and does business within this judicial district and has committed and is committing the acts alleged herein within this judicial district.

**VENUE**

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 as a substantial part of the events and omissions giving rise to this action occurred within this district.

**GENERAL ALLEGATIONS**

7. Between August and November 2007, Sears entered into six agreements ("Agreements") with Bialla requiring Bialla to identify and refer qualified applicants to Sears for six employment positions: Executive Vice President "Newco," Senior Technology Officer, Vice President General Manager Sears.com / Marketplace, Vice President General Manager Kmart.com / Marketplace, Divisional Vice President Product Management Sears Holdings and Director, Kmart.com. Copies of the agreements are attached as collective **Exhibit A**.

8. Five of the Agreements provided that Sears was required to pay Bialla a specified fee in installments: one-third when Bialla submitted an initial invoice for the search, one-third after the second month and the final one-third "at placement." The agreement for Director, Kmart.com provided that Sears was required to pay Bialla a specified fee in installments: one-third when Bialla submitted an initial invoice for the search, one-third after the end of the first month and the final one-third when an offer of employment is accepted by the selected candidate.

1           9.       For the Executive Vice President “Newco” position, Bialla identified and referred  
2   an applicant to Sears who was hired. Sears paid the initial and second month installments of  
3   \$77,777.77 each, and later erroneously paid 100 percent of the fee on March 7, 2008. Thus,  
4   Sears overpaid Bialla \$155,555.54.

10. For the Senior Technology Officer position, Bialla identified and referred an applicant to Sears who was hired. Sears paid the initial installment of \$77,777.77, and later erroneously paid 100 percent of the fee on March 7, 2008. Thus, Sears overpaid \$77,777.77.

11. For the Vice President General Manager Sears.com / Marketplace position, Bialla did not identify and refer an applicant to Sears who was hired. Sears paid all three installments of \$41,667.67 even though no one was placed. Thus, Sears overpaid \$41,667.67.

11           12.     For the Divisional Vice President Product Management Sears Holdings position,  
12   Bialla did not identify and refer an applicant to Sears who was hired.  Sears paid all three  
13   installments of \$41,667.67 even though no one was placed.  Further, Bialla used the same cash  
14   compensation estimate for a Divisional Vice President as it did for a Vice President, which  
15   resulted in inflated installment payments.  As a result, Sears has overpaid Bialla for this search  
16   by more than \$41,667.67.

17           13.     For the Director, Kmart.com position, Bialla did not identify and refer an  
18     applicant to Sears who was hired. Sears paid all three installments of \$27,777.77 even though no  
19     one was placed. Thus, Sears overpaid \$27,777.77.

### **FIRST CAUSE OF ACTION**

**(Breach of Contract)**

**(Against Bialla)**

23           14.     Sears incorporates and repelads by this reference the allegations of paragraphs 1  
24 through 14 as though fully set forth herein.

25            15.    Sears and Bialla executed the Agreements attached as Exhibit A.

26            16.     Bialla breached the Agreements by retaining the monies Sears overpaid Bialla.

17. Sears has fully performed all of the conditions, covenants and promises required to be performed on its part under the Agreements.

19. The Agreements provide for costs and attorneys' fees. Sears is entitled to its costs and reasonable attorneys' fees in amounts that will be shown.

## SECOND CAUSE OF ACTION

### (Unjust Enrichment)

**(Against Bialla)**

20. Sears repleads and incorporates the allegations of paragraphs 1 through 19 as though fully set forth herein.

21. Bialla's conduct as alleged herein, including without limitation failing to reimburse installment payments that were overpaid to Bialla, has resulted in Bialla's acquisition of a benefit that it may not justly retain.

13           22.     Bialla must therefore be required to return Sears the overpayments it received,  
14     together with prejudgment interest, until paid.

## PRAYER FOR RELIEF

WHEREFORE, Sears prays for judgment against Bialla as follows:

- 17           1.       For compensatory damages in excess of \$300,000, according to proof;  
18           2.       For costs and reasonable attorneys' fees;  
19           3.       For prejudgment interest; and  
20           4.       For such other and further relief as the court may deem just and proper.

Dated: August<sup>15</sup>, 2008

GLYNN & FINLEY, LLP  
CLEMENT L. GLYNN  
JONATHAN A. ELDREDGE  
One Walnut Creek Center  
100 Pringle Avenue, Suite 500  
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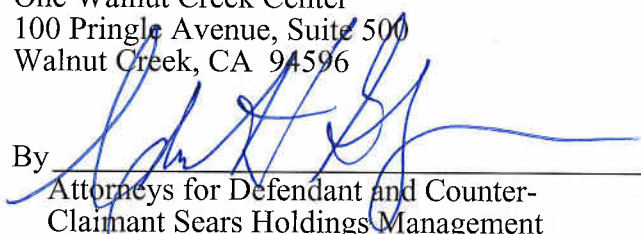
By \_\_\_\_\_  
Attorneys for Defendant  
Sears Holdings Management Corporation  
(erroneously sued as Sears Holdings, Inc.)

**DEMAND FOR JURY TRIAL**

Sears Holdings Management Corporation (erroneously sued as Sears Holdings, Inc.) hereby demands a jury trial on all counterclaims so triable.

Dated: August 15, 2008

GLYNN & FINLEY, LLP  
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Walnut Creek, CA 94596

By   
Attorneys for Defendant and Counter-  
Claimant Sears Holdings Management  
Corporation (erroneously sued as Sears  
Holdings, Inc.)

**EXHIBIT A**



AUG. 21, 2007 11:41AM

RECRUITMENT DEPT SHC

NO. 216 P. 7

# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: August 9, 2007

Sears Holdings, Inc., hereafter referred to as Client, requests the services of Bialla and Associates, Inc., hereafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Executive Vice President, "Newco".

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, and one-third at the end of each of two consecutive months thereafter, unless the search is successfully concluded earlier, when the balance of the fee will be due in full. ~~Final payment at placement~~ <sup>or</sup>

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.



AUG.21.2007 11:41AM RECRUITMENT DEPT SHC

NO.215 P.B

Executive Search Agreement  
(continued)

Page Two

If the three month billing period is completed and the position is still open, Client may request B & A continue the search. In this case, B & A will bill Client for its costs and expenses only and no fee will be charged to Client.

Should Client or any Client affiliate company hire any candidate presented by B & A during this search assignment for another position above and beyond the assignment described in this agreement within twelve months of the date of this Agreement, it is agreed that B & A will be entitled to receive a fee that is consistent with standard B & A fees for a search at the level of the hired candidate.

In the unlikely event that any action is required to collect B & A's fee, Client agrees to pay all of B & A's costs of collection, including reasonable attorneys' fees and disbursements.

Accepted and agreed:

Accepted and agreed:

BIALLA and ASSOCIATES, INC.

SEARS HOLDINGS, INC.

By: By: Date: 8/9/07Date: 8/20/07

AUG. 21. 2007 11:40AM RECRUITMENT DEPT SHC

NO. 216 P. 5

# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: August 15, 2007

Sears Holdings, Inc., hereafter referred to as Client, requests the services of Bialla and Associates, Inc., hereafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Vice President General Manager Sears.com/Marketplace.

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, and one-third at the end of each of two consecutive months <sup>Month 2</sup> thereafter, unless the search is successfully concluded earlier, when the balance of the fee will be due in full. *Final payment at placement* <sup>or</sup>

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.

AUG. 21. 2007 11:40AM RECRUITMENT DEPT SHC

NO. 216 P. 6

Executive Search Agreement  
(continued)

Page Two

If the three month billing period is completed and the position is still open, Client may request B & A continue the search. In this case, B & A will bill Client for its costs and expenses only and no fee will be charged to Client.

Should Client or any Client affiliate company hire any candidate presented by B & A during this search assignment for another position above and beyond the assignment described in this agreement within twelve months of the date of this Agreement, it is agreed that B & A will be entitled to receive a fee that is consistent with standard B & A fees for a search at the level of the hired candidate.

In the unlikely event that any action is required to collect B & A's fee, Client agrees to pay all of B & A's costs of collection, including reasonable attorneys' fees and disbursements.

Accepted and agreed:

Accepted and agreed:

BIALLA and ASSOCIATES, INC.

SEARS HOLDINGS, INC.

By: By: Date: 8/15/07Date: 8/20/07



# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: August 15, 2007

Sears Holdings, Inc., hereafter referred to as Client, requests the services of Biallin and Associates, Inc., hereafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Divisional Vice President Product Management Sears Holdings.

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, and one-third at the end of each of two consecutive months thereafter, unless the search is successfully concluded earlier, when the balance of the fee will be due in full. ~~Final payment at placement~~ <sup>MONTH 2</sup> ~~or~~

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.

RECEIVED DEPT. EPL

NO. 215 P. 2

Executive Search Agreement  
(continued)

Page Two

If the three month billing period is completed and the position is still open, Client may request B & A continue the search. In this case, B & A will bill Client for its costs and expenses only and no fee will be charged to Client.

Should Client or any Client affiliate company hire any candidate presented by B & A during this search assignment for another position above and beyond the assignment described in this agreement within twelve months of the date of this Agreement, it is agreed that B & A will be entitled to receive a fee that is consistent with standard B & A fees for a search at the level of the hired candidate.

In the unlikely event that any action is required to collect B & A's fee, Client agrees to pay all of B & A's costs of collection, including reasonable attorneys' fees and disbursements.

Accepted and agreed:

Accepted and agreed:

BIALLA and ASSOCIATES, INC.

SEARS HOLDINGS, INC.

By: 

By: 

Date: 8/15/07

Date: 8/20/07

# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: August 15, 2007

Sears Holdings, Inc., hereafter referred to as Client, requests the services of Bialla and Associates, Inc., hereafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Vice President General Manager Sears.com/Marketplace.

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, and one-third at the end of each of two consecutive months (Month 2 thereafter, unless the search is successfully concluded earlier, when the balance of the fee will be due in full. *Final payment at placement.*

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.

AUG. 21. 2007 11:40AM RECRUITMENT DEPT SHC

NO. 216 P. 5

Executive Search Agreement  
(continued)

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If the three month billing period is completed and the position is still open, Client may request B & A continue the search. In this case, B & A will bill Client for its costs and expenses only and no fee will be charged to Client.

Should Client or any Client affiliate company hire any candidate presented by B & A during this search assignment for another position above and beyond the assignment described in this agreement within twelve months of the date of this Agreement, it is agreed that B & A will be entitled to receive a fee that is consistent with standard B & A fees for a search at the level of the hired candidate.

In the unlikely event that any action is required to collect B & A's fee, Client agrees to pay all of B & A's costs of collection, including reasonable attorneys' fees and disbursements.

Accepted and agreed:

Accepted and agreed:

BIALLA and ASSOCIATES, INC.

SEARS HOLDINGS, INC.

By: By: Date: 8/15/07Date: 8/20/07



# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: September 12, 2007

Sears Holdings, Inc., hereinafter referred to as Client, requests the services of Bialla and Associates, Inc., hereinafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Senior Technology Officer.

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, and one-third at the end of ~~each of two consecutive months~~ *Month 2* thereafter, unless the search is successfully concluded earlier, when the balance of the fee will be ~~due in full~~ *paid in full. Final payment at placement.*

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.



Executive Search Agreement  
(continued)

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If the three month billing period is completed and the position is still open, Client may request that B & A continue the search. In this case, B & A will bill Client for its costs and expenses only, and no additional fee will be charged to Client.

Should Client or any Client affiliate company hire any candidate presented by B & A during this search assignment for another position above and beyond the assignment described in this Agreement within twelve months of the date of this Agreement, it is agreed that B & A will be entitled to receive a fee that is consistent with standard B & A fees for a search at the level of the hired candidate.

In the unlikely event that any action is required to collect B & A's fee, Client agrees to pay all of B & A's costs of collection, including reasonable attorneys' fees and disbursements.

Accepted and agreed:

Accepted and agreed:

BIALLA and ASSOCIATES, INC.

SEARS HOLDINGS, INC.

By: 

By: 

Date: 9/12/07

Date: 9-19-07

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NO. 660 P. 1

# B I A L L A

## EXECUTIVE SEARCH AGREEMENT

Effective: October 30, 2007

Sears Holdings, Inc., hereafter referred to as Client, requests the services of Bialla and Associates, Inc., hereafter referred to as B & A, for the purpose of identifying and referring to Client qualified applicants for the position of Director, Kmart.com.

Client will pay a fee of 33 1/3% of the first year's cash compensation of the individual specified. First year's compensation is defined as base salary plus signing bonus (if any) and target cash performance bonus. Stock option grants are specifically excluded.

Client will pay one-third of the cash fee upon B & A's submission of an initial invoice for this search, one-third at the end of the first month of the search, and the balance will be due and immediately payable when an offer of employment is accepted by the selected candidate or if the search is canceled after the initial three month period, per below.

Client will pay reasonable out-of-pocket expenses for such items as travel, lodging, and communications incurred by B & A in the performance of services, approved by Client, and all expenditures of \$25 or more will be supported by receipts.

The search will continue either until an individual acceptable to Client is located or until Client requests B & A to discontinue such search. If Client requests B & A to discontinue such search during the initial three-month period, B & A will be paid a pro rata portion of the projected cash fee based on the time B & A conducted the search, compared to the initial three-month period. If Client requests cancellation of the search after the three-month period, the full projected cash fee will be considered earned by B & A.

B & A will subject all possible candidates, even those identified by the client through its personal or professional relationships, in or outside the organization, to the same qualification process.

Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.